

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

SECRETARY OF STATE
AGENCY: _____ TITLE NUMBER: 153

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: STANDARD SIZE & FORMAT FOR RULES &
PROCEDURE FOR PUBLICATION OF THE STATE REGISTER OR PARTS OF
THE STATE REGISTER

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____


TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 162

SECTION §64-9-2(i), PASSED ON March 9, 1996

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: June 7, 1996



AUTHORIZED SIGNATURE

TITLE 153
LEGISLATIVE RULES
SECRETARY OF STATE

SERIES 6
STANDARD SIZE AND FORMAT FOR RULES AND PROCEDURES FOR
PUBLICATION
OF THE STATE REGISTER OR PARTS OF THE STATE REGISTER

§153-6-1. General.

1.1. Scope. -- This legislative rule establishes the standard size and format for legislative, procedural and interpretive rules and related documents filed in the Secretary of State's office and procedures for publication of documents from the State Register.

1.2. Authority. -- W. Va. Code §§29A-2-6(c) and 29A-2-7(I).

1.3. Filing Date. -- March 26, 1996.

1.4. Effective Date. -- June 7, 1996.

§153-6-2. Definitions.

2.1. Agency Approved. -- Every rule proposed by an agency and which has completed the public hearing or public comment period, approved by the agency and submitted for Legislative review.

2.2. Emergency. -- Any legislative rule filed by an agency finding that the rule must be effective before completing the full Legislative cycle, promulgated in accordance with W. Va. Code §29A-3-15, and promulgation is necessary for the immediate preservation of the public peace, health, safety or welfare is necessary to comply with a time limitation, established by W. Va. Code or by a federal statute or regulation or to prevent substantial harm to the public interest.

2.3. Interpretive. -- Every rule, adopted by an agency independently of any delegation of legislative power which is intended by the agency to provide information or guidance to the public regarding the agency's interpretations, policy or opinions upon the law enforced or administered by

it, and which is not intended by the agency to be determinative of any issue affecting private rights, privileges or interests.

2.4. Legislative. -- Every rule, proposed or promulgated by an agency pursuant to W. Va. Code §29A-3 et seq., which, when promulgated after or pursuant to authorization of the legislature, has (1) the force of law, (2) supplies a basis for the imposition of civil or criminal liability, or (3) grants or denies a specific benefit. Every rule, which, when effective, is determinative on any issue affecting private rights, privileges or interests is a legislative rule. Unless lawfully promulgated as an emergency rule, a legislative rule is only a proposal by the agency and has no legal force or effect until promulgated by specific authorization of the legislature.

2.5. Legislative Exempt. -- Any rule filed that has been given a specific exemption from following the procedures for rulemaking found in W. Va. Code §29A-1-3, or in other sections of the W. Va. Code. Examples of such exemptions are: Board of Probation and Parole, Public Service Commission, Board of Public Works, or Secondary Schools Activities Commission. Also exempt are rules relating to or contested cases involving the conduct of inmates or other persons admitted to public institutions, open seasons and the bag, creel, size, age, weight and sex limits with respect to the wildlife in this state, the conduct of persons in military service or the receipt of public assistance.

2.6. Modified. -- Every rule that has been changed to incorporate suggested changes from the Legislative Rule Making Review Committee (LRMRC) with agreement of the agency.

2.7. Procedural. -- Every rule which fixes rules of procedure, practice or evidence for dealings

with or proceedings before an agency, including forms prescribed by the agency.

§153-6-3. Standard Size Of Rules And Related Documents.

3.1. All rules and related documents shall be typed on white 8 ½ inch by 11 inch paper, single spaced and either on one (1) side or double sided, but not a combination of both, unless specifically exempted by this rule.

3.2. All rules shall have at least ½ inch on the left, right, top and bottom margins surrounding the text unless specifically exempted by this rule.

§153-6-4. Forms and Other Documents.

The following forms are to be included when an agency files a rule with the Secretary of State, unless specifically exempted by another section of this rule. (All forms are at the end of this rule.)

4.1. When an agency files a legislative, procedural or interpretive rule for public hearing or public comment period, the following documents must be included:

4.1.a. Form 1 -- Notice of public hearing on a proposed rule. This form is used if the agency wants to hold a public hearing or if the agency wants to hold a public hearing and comment period.

4.1.b. Form 2 -- Notice of comment period on a proposed rule. This form may be used if the agency wants only to have a public comment period.

4.1.c. Brief summary of the rule;

4.1.d. Statement of circumstances which require the proposed rule;

4.1.e. Appendix B -- Fiscal note and

4.1.f. The signature of the cabinet secretary or department head of those agencies not covered by a cabinet secretary on the notice of public hearing or comment period or a letter authorizing filing of the rule.

4.2. When an agency files a legislative rule as an agency approved rule, the following documents must be included:

4.2.a. Form 3 -- Notice of agency approval of proposed rule and filing with the LRMRC;

4.2.b. Brief summary of the rule;

4.2.c. Statement of circumstances which require the proposed rule;

4.2.d. Appendix B -- Fiscal note;

4.2.e. LRMRC questionnaire signed and with contact person's name, address and telephone number clearly typed or printed;

4.2.f. The signature of the cabinet secretary or the department head of those agencies not covered by a cabinet secretary on the notice of agency approval or a letter authorizing filing of the rule.

4.2.g. The entire rule;

4.2.h. Transcript of hearing, if applicable, and a copy of all written comments and

4.2.i. Response to the comments.

4.3. When an agency files a modified rule following review by LRMRC, the following documents must be included:

4.3.a. Form 4 -- Notice of modification of a proposed rule;

4.3.b. Either the signature of the cabinet secretary or department head (of those agencies not covered by a cabinet secretary) on the notice of rule modification or a letter authorizing filing of the rule and

4.3.c. The rule as approved by LRMRC.

4.4. When an agency files a agency adoption of a procedural or interpretive rule, the following documents must be included:

4.4.a. Form 5 -- Notice of agency adoption

of a procedural or interpretive rule or a legislative rule exempt from legislative review;

4.4.b. The signature of the cabinet secretary or the department head of those agencies not covered by a cabinet secretary on the notice of agency adoption or a letter authorizing filing of the rule;

4.4.c. If changes were made because of the comments received, the entire rule;

4.4.d. Transcript of hearing, if applicable, and a copy of all written comments;

4.4.e. Response to the comments, and

4.4.f. Electronic filing of the rule. (See section 14 of this rule.)

4.5. When an agency files a legislative exempt rule, the following documents must be included:

4.5.a. Form 5 -- Notice of agency adoption of a procedural or interpretive rule or a legislative rule exempt from legislative review;

4.5.b. Brief summary of the rule;

4.5.c. Statement of circumstances which required the proposed rule;

4.5.d. Appendix B -- Fiscal note;

4.5.e. The signature of the cabinet secretary or the department head of those agencies not covered by a cabinet secretary on the notice of agency adoption or a letter authorizing filing of the rule and

4.5.f. Electronic filing of the rule. (See section 14 of this rule.)

4.6. When an agency final files a legislative rule following approval by the Legislature, the following documents must be included:

4.6.a. Form 6 -- Notice of final filing and adoption of a legislative rule authorized by the West Virginia Legislature;

4.6.b. Promulgation history;

4.6.c. The signature of the cabinet secretary or the department head of those agencies not covered by a cabinet secretary on the notice of agency adoption or a letter authorizing filing of the rule and

4.6.d. Electronic filing of the rule. (See section 14 of this rule.)

4.7. When an agency files a rule as an emergency rule or an emergency amendment, the following documents must be included:

4.7.a. Form 7 -- Notice of an emergency rule, or

4.7.b. Form 8 -- Notice of an emergency amendment to an emergency rule;

4.7.c. Brief summary of the rule;

4.7.d. Specific statement of circumstances which require the rule to be filed as an emergency;

4.7.e. Appendix B -- Fiscal note;

4.7.f. LRMRC questionnaire signed by the contact person with their name, address and telephone number clearly typed or printed and

4.7.g. The signature of the cabinet secretary or the department head of those agencies not covered by a cabinet secretary on the notice of emergency rule or emergency amendment or a letter authorizing filing of the rule.

§153-6-5. Numbering And Indentation.

5.1. All agencies shall have a title number assigned by the Secretary of State.

5.2. All rules of an agency shall have a series number assigned by the Secretary of State.

5.3. Text breakdowns shall be found in Table 153-6A at the end of this rule. All new series rules and repealed and replaced rules shall follow this breakdown. When filing amendments to existing series, the agency shall retype the entire series and utilize this breakdown.

5.4. Section headings shall contain the title number, series number, section number and name of the section. (Example: §153-6-4. Numbering and indentation.)

5.5. Subsections shall contain the section number and subsection number. (Example 4.5 or 4.6 etc.)

5.6. Breakdowns below the subsection level shall contain only the number or letter for the appropriate level as required by subsection 4.3 of this rule.

5.7. Each breakdown shall be indented from the preceding level on the first line, but shall be carried back to the left margin for the second and succeeding lines of text.

§153-6-6. Underlining, Strike-Throughs And Capitalization.

6.1. There shall be no underlining of text except to indicate new language to be added to an existing series.

6.2. Underlining shall indicate language to be added to a rule.

6.3. Strike-throughs shall indicate language to be deleted from a rule.

6.4. There shall be no capitalization except for proper names, the first word in a sentence or abbreviations which are routinely capitalized. When there is a doubt, words should not be capitalized. Do not capitalize for emphasis.

§153-6-7. Repeal And Replacement.

7.1. When an agency is proposing major changes to an existing rule involving the majority of sections, the agency may wish to repeal the existing rule in its entirety and replace the rule as a new rule. In this case the agency shall file the proposed rule without underlining and strike-throughs, if the agency includes in the general section a repealer clause.

7.2. The repealer clause shall be in the general section. It shall state that the prior rule is to be repealed and replaced. It shall state the rule to be repealed by its citation, name, filing date and effective date.

7.2.a. Example: -- 1.5. Repeal of former rule. -- This legislative rule repeals and replaces WV 153CSR6 "Standard Size and Format for Rules and Related Documents Filed in the Secretary of State's Office" filed April 1, 1988 and effective April 1, 1988.

7.3. If the agency does not include a repealer cause, then the agency shall include underlining and strike-throughs to indicate language changes.

7.4. The procedure and format for filing a repealed and replaced rule shall be the same as those for a new series rule as required under section 9 of this rule.

§153-6-8. Incorporation By Reference.

8.1. Documents incorporated by reference shall be filed at the time the proposed rule is filed.

8.2. When incorporating by reference, the document shall be identified its proper title, proper citation, date and any other information needed to clearly identify the document to be incorporated.

8.3. It is not necessary to file the following documents when they are incorporated by reference:

8.3.a. West Virginia Code; and

8.3.b. West Virginia Code of State Rules

§153-6-9. Filing Proposed Amendments To An Existing Series.

9.1. Filing for public hearing or comment period.

9.1.a. The agency shall file with the Secretary of State the entire existing rule series regardless of the amount of proposed changes. The notice for public hearing or comment period must be attached.

9.1.b. All language to be deleted shall be stricken through, but clearly legible. All the language to be added shall be underlined.

9.1.c. Amendments shall not change the series number of the existing rule unless the change has been approved by the Secretary of State.

9.2. Filing of agency approved legislative rules following a public hearing or comment period.

9.2.a. An agency must file an agency approved rule with both the Secretary of State and LRMRC within ninety (90) days following public hearing or comment period.

9.2.b. If no change has been made to the rule filed for a public hearing or comment period, the agency shall file with the Secretary of State the notice of agency approval, a copy of the entire proposed rule with changes underlined and struck-through, a copy of all comments received and a response to all of the comments. When several comments are of a similar nature, one response to the comments is sufficient. The entire rule series with all attachments shall be filed with the LRMRC.

9.2.c. If changes have been made, the agency shall file with the Secretary of State the notice of agency approval, include the changes and refile the entire proposed series with changes underlined and struck-through, as if the previous filing had not occurred. The agency shall also file a summary of changes made as a result of the public hearing, a copy of all comments received, and a brief response to all comments. When several comments are of a similar nature, one response to the comments is sufficient. The entire rule series with all attachments shall be filed with LRMRC.

9.3. Filing legislative exempt, procedural and interpretive agency adopted rules following public hearing or comment period.

9.3.a. For those procedural or interpretive rules filed as agency adopted rules when no change has been made to the rule filed for public hearing or comment period, the agency shall file with the Secretary of State a notice of agency adoption, a promulgation history, a copy of all comments, and

a response to all comments and a copy of the rule electronically. (See section 14 of this rule.) When several comments are of a similar nature, one response to the comments is sufficient.

9.3.b. If changes have been made, the agency shall file with the Secretary of State a notice of agency adoption, include the changes and refile the entire proposed changes with underlining and strike-throughs as if the previous filing had not occurred. The agency shall also file a summary of changes made as a result of the public hearing, a copy of all comments received, as well as a brief response to all comments and a copy of the rule electronically. (See section 14 of this rule.) When several comments are of a similar nature, one response to such comments will suffice.

9.3.c. For those agencies or rules exempt from the Administrative Procedures Act (§29A-1-3) and whose filing with the Secretary of State of an agency adopted rule represents the first and only filing of changes to an existing series, the agency shall include all necessary underlining and strike-throughs to indicate language to be deleted and language to be added. The agency shall also file the rule electronically. (See section 14 of this rule.)

9.4. Filing of modifications to legislative rules due to LRMRC objections.

9.4.a. The agency shall refile with the Secretary of State and LRMRC the entire series rule with the modifications included.

9.4.b. This filing shall be within ten (10) days of the date of the LRMRC meeting of which the modifications were approved.

9.5. Final filing of legislative rules authorized by the legislature.

9.5.a. The agency shall file the notice of agency adoption, a promulgation history and also file the rule electronically. (See section 14 of this rule.) The Secretary of State shall produce the final rule from the last filing, with underlinings and strike-throughs, and any legislative amendments within the enrolled bill of authorization.

9.5.b. The final rule as produced by the Secretary of State shall be sent to the agency for review and proofing. The agency has to ten (10) working days to review the final rule and return any corrections or a statement confirming the accuracy of the final rule.

9.5.c. Following confirmation or corrections, as the case may be, the Secretary of State shall final file the proposed rule and include it in the official West Virginia Code of State Rules.

9.5.d. The official rule is the rule authorized by the Legislature, produced by the Secretary of State, confirmed by the agency and filed in the West Virginia Code of State Rules.

§153-6-10. Filing Of A Proposed New Series Rule.

10.1. This section applies to an agency proposing an entirely new series rule which is not an amendment to an existing rule and which requires the assignment of a new series number.

10.2. The proposed new series rule shall be designated as either a "legislative rule", "procedural rule" or "interpretive rule".

10.3. All proposed new series shall contain a section one "General" which shall include the following subsections -- 1.1. Scope, 1.2. Authority, 1.3. Filing Date, and 1.4. Effective date. During the time the rule is proposed, the filing date and effective date shall be blank.

10.4. Filing for public hearing or comment period.

10.4.a. The agency shall file with the Secretary of State the entire proposed new series rule. There will, of course, be no strike-throughs or underlining. The notice for public hearing or comment period must be attached.

10.5. Filing of an agency approved legislative rule following public hearing or comment period.

10.5.a. An agency must file with the Secretary of State and with LRMRC an agency

approved rule within ninety (90) days following public hearing or comment period.

10.5.b. If no changes have been made to the rule filed for public hearing or comment period, the agency shall file with the Secretary of State the notice of agency approval, a copy of the entire proposed rule with changes, a copy of all comments received and a response to all of the comments. When several comments are of a similar nature, one response to the comments is sufficient. The entire series with all attachments shall be filed with the LRMRC.

10.5.c. If changes have been made to the rule, the agency shall file with the Secretary of State the notice of agency approval, and refile the entire proposed series with changes included, but without underlines and strike-throughs. The agency shall also file a summary of changes made as a result of the public hearing, a copy of all comments received and a brief response to all comments. When several comments are of a similar nature, one response to the comments is sufficient. The entire rule series with all attachments shall be filed with LRMRC.

10.6. Filing legislative exempt, procedural and interpretive agency adopted rules following public hearing or comment period.

10.6.a. For those procedural or interpretive rules filed as agency adopted rules when no change has been made to the rule filed for public hearing or comment period, the agency shall file with the Secretary of State a notice of agency adoption, a promulgation history, a copy of all comments, and a response to all comments and a copy of the rule electronically. (See section 14 of this rule.) When several comments are of a similar nature, one response to the comments is sufficient.

10.6.b. If changes have been made, the agency shall file with the Secretary of State a notice of agency adoption and refile the entire proposed rule without underlining and strike-throughs as if the previous filing had not occurred. The agency shall also file a summary of changes made as a result of the public hearing, a copy of all comments received, as well as a brief response to all comments and a copy of the rule electronically. (See section 14 of

this rule.) When several comments are of a similar nature, one response to such comments will suffice.

10.6.c. For those agencies or rules exempt from Administrative Procedures Act (§29A-1-3), and whose filing of an agency adopted rule represents the first and only filing, the agency shall file with the Secretary of State the entire series, without underlining and strike-throughs and a copy of the rule electronically. (See section 14 of this rule.)

10.7. Filing of modification to legislative rules due to LRMRC objections.

10.7.a. The agency shall refile the entire series rule with the Secretary of State and with LRMRC with the modifications included.

10.7.b. This filing shall be within ten (10) days of the date of the LRMRC meeting at which the modifications were approved.

10.8. Final filing of legislative rules authorized by the Legislature.

10.8.a. The agency shall file with the Secretary of State the notice of agency adoption, a promulgation history and a copy of the rule electronically. (See section 14 of this rule.) The Secretary of State shall produce the final rule from the last filing, with underlining and strike-throughs, and any legislative amendments within the enrolled bill of authorization.

10.8.b. The final rule as produced by the Secretary of State shall be sent to the agency for review and proofing. The agency has up to ten (10) working days to review the final rule and return any corrections or a statement of confirmation.

10.8.c. Following confirmation or corrections, as the case may be, the Secretary of State shall final file the proposed rule and include it in the official West Virginia Code of State Rules.

10.8.d. The official rule shall be the rule authorized by the legislature, produced by the Secretary of State, confirmed by the agency and filed in the West Virginia Code of State Rules.

§153-6-11. Filing Of Emergency Rules.

11.1. Filing amendments to an existing series as an emergency rule.

11.1.a. The agency shall utilize strike-throughs and underlining to indicate amendments.

11.1.b. The agency shall attach the proper notice.

11.2. Filing a new series rule as an emergency rule.

11.2.a. The agency shall file the entire rule with proper notice.

11.3. Filing of amendments to an emergency rule.

11.3.a. When amending an emergency rule which was initially filed as amendments to an existing series as in subsection 11.1, the agency shall include the new amendments and refile the entire proposal with underlining and strike-throughs, as if the previous filing had not occurred. This will not result in any added time to the lifespan of the initially filed emergency rule.

11.3.b. When amending an emergency rule which was initially filed as a new series rule, the agency shall include the amendments with underlining and strike-throughs and refile the entire proposal, as if the previous filing had not occurred. This will not result in any additional time to the lifespan of the initially filed emergency rule.

§153-6-12. Tables, Charts, Diagrams, Etc.

12.1. When an agency needs to include charts, tables, diagrams or other information which is not in a typical narrative format, the agency shall refer to the table, chart, diagram, etc. within the text at the location the table, chart, diagram, etc. is to be located, but the actual table, chart, diagram, etc. will be attached to the back of the proposal. An example of this can be found in this rule in subsection 4.4.

12.2. Tables, charts, diagrams, etc. shall be named as "Table", "Chart", "Diagram", etc. fol-

lowed by the title number and series number of the rule in which they are located and a letter beginning with "A" for the first table, chart, diagram, etc.; "B" for the second table, chart, diagram, etc. and so on.

12.3. Exceptions may be made by the Secretary of State for tables, charts, diagrams, etc. which can be reproduced and fit into the double column format.

§153-6-13. Effective Dates.

13.1. The effective date of the series found in the general section shall be the date the rule was initially adopted or the date of the last change to the series, whichever is latest.

13.1.1. The effective date of the general section shall remain unless the rule is repealed and replaced utilizing a repealer clause. In that case, the effective date in the general section shall be the date the replacement rule becomes effective.

13.1.2. Effective dates for amendments to sections of an existing rule shall be noted in parenthesis at the section heading of the section amended. This will allow the user to historically follow amendments to sections.

§153-6-14. Electronic Filing.

14.1. An agency must file the rule in an electronic format, following all formatting rules of the Secretary of State unless given specific written exemption from the Secretary of State.

14.1.a. If an agency subscribes to the Legislative Computer System (Edgar), the rule may be electronically transferred.

14.1.b. If an agency does not subscribe to Edgar, the rule must be filed on a high density diskette in a WordPerfect or WordPerfect compatible format.

14.1.b.1. The electronic copy must have all underlinings and stricken-through language removed.

14.1.b.2. The electronic copy must not have any headers or footers either set up through the format or typed on individual pages.

14.2. If an agency does not comply with the formatting as specified by the Secretary of State, the electronic version will be refused and sent back for correction to the agency.

§153-6-15. Publication Of Materials From The State Register.

15.1. The State Register shall be established and maintained by the Administrative Law Division of the Secretary of State.

15.2. The State Register shall consist of the following parts:

15.2.a. The West Virginia Code of State Rules;

15.2.b. The West Virginia Register;

15.2.c. The Open Meeting File;

15.2.d. The Orders File;

15.2.e. Other Agency Action File; and

15.2.f. The Obsolete File

15.3. The West Virginia Code of State Rules (WVCSR).

15.3.a. The WVCSR is the official compilation of state agency rules currently in effect, excluding emergency rules.

15.3.b. The Secretary of State shall supplement the WVCSR monthly with any changes to the current rules filed during the previous month. The full text of the particular series, whether new or amended, shall be sent to subscribers of the WVCSR. Emergency rules shall be cited as being filed, but the text of emergency rules shall not be a part of the monthly supplement.

15.3.c. The Secretary of State may contract for publication and maintenance of the WVCSR, or

parts thereof, but the Secretary of State is responsible for the codification and validity of all state agency regulations filed by state agencies for inclusion in the WVCSR.

15.3.d. The Secretary of State may offer parts of the WVCSR with a supplement service.

15.3.e. The WVCSR shall be a looseleaf publication available at a cost established by the Secretary of State to defray the expense of publication and supplements.

15.3.f. Parts of the WVCSR may be available through duplication or other means at a cost to defray the expense to the Secretary of State.

15.4. The West Virginia Register (WVR).

15.4.a. The WVR is a weekly publication of notices and other announcements filed with the Secretary of State relating to rule-making, open meetings, orders and other actions by state agencies.

15.4.b. The WVR shall be distributed by annual subscription at a cost established by the Secretary of State to defray the expense of production and delivery.

15.5. The Open Meetings File.

15.5.a. The Open Meetings File consists of notices filed by agencies with the Secretary of State for open governmental proceedings under W. Va. Code, §6-9A-3.

15.5.b. Notices which are filed and found to be in violation of the notice requirements of W. Va. Code, §6-9A-3 shall be published, but shall indicate noncompliance. A copy of this finding and the reasons for noncompliance shall be sent to the agency affected.

15.6. The Orders File.

15.6.a. The Orders File consists of Orders issued by state agencies following contested case hearings and required to be filed with the Secretary of State pursuant to W. Va. Code, §29A-9-2.

15.7. Other Agency Action File.

15.7.a. The Other Agency Action File consists of all other information required to be filed with the Secretary of State by statute, rule or agency directive or practice. Notice of the filings shall be included in the WVR.

15.8. Obsolete File.

15.8.a. The Obsolete File shall consist of obsolete rules of state agencies. The Secretary of State is responsible for certifying the time period during which obsolete rules were in effect.

TABLE 153-6 A
TEXT BREAKDOWN

| | |
|---------------------------------|--------------|
| 153 CSR | TITLE |
| 153 CSR 6 | SERIES |
| 153 CSR 6-1. | SECTION |
| 153 CSR 6-1.1. | SUBSECTION |
| 153 CSR 6-1.1.a. | SUBDIVISION |
| 153 CSR 6-1.1.a.1. | PARAGRAPH |
| 153 CSR 6-1.1.a.1.A. | SUBPARAGRAPH |
| 153 CSR 6-1.1.a.1.A.1. | PART |
| 153 CSR 6-1.1.a.1.A.1.(a) | SUBPART |
| 153 CSR 6-1.1.a.1.A.1.(a)(1) | ITEM |
| 153 CSR 6-1.1.a.1.A.1.(a)(1)(A) | SUBITEM |

July 4

ANALYSIS OF PROPOSED LEGISLATIVE RULES

AGENCY: Secretary of State

SUBJECT: Standard Size and Format for Rules and Procedure for
Publication of the State Register on Parts of the
State Register, 153 CSR 6

PERTINENT DATES

| | |
|--|---------------|
| Filed for public comment: | June 27, 1995 |
| Public comment period ended: | July 27, 1995 |
| Filed following public comment period: | July 27, 1995 |
| Filed LRMRC: | July 27, 1995 |
| Filed as emergency: | n/a |
| Fiscal Impact: | none |

ABSTRACT

This legislative rule establishes standard size and format for filing of legislative, procedural and interpretive rules and other documents in the State Register.

The legislature changed several areas of rule making, these changes bring this rule up-to-date with the West Virginia Code. Also there are several technical changes which should clarify the way to file rules.

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 1 is the standard general section, setting forth the scope, authority, filing date, and effective date of the proposed rule.

Section 3 is a new section but the requirements for filing have not changed. This section explains the forms that agencies must use when filing rules with the Secretary of State's office. It also explains what documents must accompany the forms. The forms are self explanatory. In addition to the form indicating the manner in which the agency is seeking public comment on a rule, the agency must include with the rule, a brief summary of the rule, a statement of circumstances; (which require the promulgation of the rule) a fiscal note; and the signature of the department head or cabinet secretary authorizing filing of the rule. When an agency files an agency approved rule they use Form 3, which is titled "Notice of agency approval of proposed rule and filing

with the Legislative Rule Making Review Committee." The agency must include the same documents filed with the rule prior to the public comment period. In addition, the agency must complete the LRMRC's questionnaire; and provide the transcript of the public hearing; (if one was held) a copy of all written comments received; and the agency's response to the comments.

After a rule has been approved by the LRMRC the agency must file a notice of modification of the proposed rule, authorization of the cabinet secretary or department head, and the rule as approved by the LRMRC. Following approval by the Legislature the agency files the rule as passed along with form 6 procedural history of the rule, authorization of the cabinet secretary or department head, and an electronic copy of the rule.

When an agency files an agency adopted procedural interpretive rule they use form 5, and must include authorization of the cabinet secretary or department head; transcript of the public hearing; (if one was held) a copy of all written comments; response to the comments; and an electronic form of the rule. If the agency is legislatively exempt from the rulemaking process it must nevertheless file a copy of its rules with the Secretary of State. The agency must include with the rule; a brief summary of the rule; the circumstances which require the rule; a fiscal note authorization of the cabinet secretary or department head; and an electronic copy of the rule.

If an agency files an emergency rule or an emergency amendment to a rule, form 7 or 8 must be submitted. The agency must include a brief summary of the rule; statement of circumstances; (which require the rule to be filed as an emergency) a fiscal note; a completed LRMRC questionnaire; and authorization of the cabinet secretary or department head.

Section 6 was formally section 5. It explains the method for making major changes to a rule by repealing and replacing the rule in its entirety. An example of the repealer clause is now contained in this section.

Section 7 has been amended to provide that only the West Virginia Code and the Code of State Rules may be included by reference in a rule without filing a copy of the referenced material with the rule.

Section 8 deals with filing proposed amendments to an existing rule series. It is now clearly stated that the rule is to be filed with the Secretary of State and that the notice for public hearing or comment period must be attached to the rule. The agency must file the agency approved rule with both

the Secretary of State and the LRMRC within 90 days following the public hearing or comment period. This section sets forth the forms and documents which must accompany an agency approved rule. These forms and documents are the same as discussed in section 3 above. A copy of the entire proposed rule, with strike-throughs and underlining, reflecting any changes made to the rule must be filed. The agency must include with the rule a copy of comments received and the agency's response to those comments. When several comments are of a similar nature one response may be filed.

Section 9 deals with filing a proposed new series to a rule. This section applies to an agency proposing an entirely new series rule which is not an amendment to an existing rule and which requires the assignment of a new series number. The agency must file the forms as required in section 3 of this rule, along with the public comments received and responses thereto. If changes were made to the rule a notice of agency approval must accompany the rule. The rule must have appropriate strike-throughs and underlining to reflect any changes that were made. The new series rule must be filed electronically with the Secretary of State's office.

Section 12 has been amended to show that the effective date of the rule is the date the rule was initially adopted or the date of the last change to the rule, which ever is latest.

Section 13 deals with electronic filing. This is a new section which requires agency's to file rules with the Secretary of State's office in an electronic format unless given a written exemption by the Secretary of State. An agency may file the rule by transferring it through the Edgar computer system or providing the Secretary of State's office with a double-density diskette containing the rule in a word perfect format.

AUTHORITY

Statutory authority: W. Va. Code, §29A-2-6(c) and 29A-2-7(i) which reads in pertinent part:

§29A-2-6(c)

(c) The secretary of state shall prescribe by legislative rule a standard size, format, numbering and indexing for rules to be filed in the state register and he may prescribe such procedural or interpretive rules as he deems advisable to clarify

and interpret the provisions in this section. The secretary of state shall refuse to accept for filing any rules which do not comply with the specific provisions of this section, and he may refuse to accept for filing any rules which do not comply with the procedural rules issued by him pursuant to this section until the rules sought to be filed are brought into conformity with the secretary of state's procedural rules.

§29A-2-7(i)

(i) The secretary of state may propose changes to the procedures outlined in the section above by proposing a legislative rule under the provisions of section nine, article three, but may promulgate no rules containing such changes unless authorized by the Legislature pursuant to article three.

ANALYSIS

I. Has the agency exceeded the scope of its statutory authority in approving the proposed legislative rule?

No.

II. Is the proposed legislative rule in conformity with the intent of the Statute which the rule is intended to implement, extend, apply, interpret or make specific?

Yes.

III. Does the proposed legislative rule conflict with other code provisions or with any other rule adopted by the same or a different agency?

No.

IV. Is the proposed legislative rule necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated?

Yes.

V. Is the proposed legislative rule reasonable, especially as it affects the convenience of the general public or of persons affected by it?

Yes.

VI. Can the proposed legislative rule be made less complex or more readily understandable by the general public?

Yes.

VII. Was the proposed legislative rule promulgated in compliance with the requirements of Chapter 29A, Article 3 and with any requirements imposed by any other provision of the code?

Yes.

VIII. Other

Counsel has suggested minor technical changes.

72 the state register on the twenty-fourth day of January,
73 one thousand nine hundred ninety-six, relating to the
74 secretary of state (procedures for handling ballots and
75 counting write-in votes in counties using punch card or
76 optical scan ballots, 153CSR27), are authorized.

77 (i) The legislative rules filed in the state register on the
78 twenty-seventh day of July, one thousand nine hundred
79 ninety-five, authorized under the authority of section
80 six, article two, chapter twenty-nine-a of this code,
81 modified by the secretary of state to meet the objections
82 of the legislative rule-making review committee and
83 refiled in the state register on the twenty-second day of
84 January, one thousand nine hundred ninety-six, relating
85 to the secretary of state (standard size and format for
86 rules and procedures for publication of the state register,
87 153CSR6), are authorized, with the amendments set
88 forth below:

89 On page ten, subsection 13.1., after the word 'format'
90 by inserting a comma and the words 'following all
91 formatting rules of the Secretary of State,';

92 "On page ten, paragraph 13.1.b., by striking out the
93 word 'double' and inserting in lieu thereof the word
94 'high';

95 On page ten, after subparagraph 13.1.b.2., by adding a
96 new subsection to read as follows:

97 '13.2. If an agency does not comply with the formatting
98 as specified by the Secretary of State, the electronic
99 version will be refused and sent back for correction to
100 the agency'."

§64-9-3. Governor's committee on crime, delinquency and correction.

1 (a) The legislative rules filed in the state register on the
2 twenty-eighth day of July, one thousand nine hundred
3 ninety-five, under the authority of section three, article
4 twenty-nine, chapter thirty of this code, modified by the
5 governor's committee on crime, delinquency and correc-

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900



WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

(Plus all the volunteer
help we can get)

March 12, 1996

Judy Cooper
Secretary of State
Suite 157-K Bldg 1
1900 Kanawha Blvd East
Charleston, WV 25305-0770

SB 162 authorizing, Title 153, Series 06, Standard Size & Format for Rules & Procedure for Publication of the State Register or Parts of the State Register passed the Legislature on March 9, 1996. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs **SB 162** to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 162 Section 64-9-2(i)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" DISK, YOU MUST SUBMIT A CLEAN COPY WITH ALL UNDERLINING AND STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, TO OUR OFFICE WHEN FINAL FILING THE RULE. REMEMBER, THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING, STRIKE-THROUGHS, HEADERS OR FOOTERS REMOVED, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE. NOTICE: ALL ELECTRONIC FILINGS NOT COMPLYING WITH THIS WILL BE REJECTED AND SENT BACK TO THE AGENCY TO BE RESUBMITTED!**

After the final rule is entered into the data base, the rule will be sent back to the agency for review and proofing. The agency has ten (10) working days to send a confirmation or corrections to the Secretary of States. If the agency fails to return this within ten (10) working days, the rule will be filed in the data base with a disclaimer attached stating that the agency failed to review the rule. Following confirmation, corrections or failure to review, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to contact our office.

Thank you,
Administrative Law Division

1626

H. B. 4291

(By Delegates Douglas, Gallagher, Faircloth, Compton,
Linch and Riggs)

(Introduced January 29, 1996; referred to the
Committee on the Judiciary)

153-6

A BILL to amend and reenact section two, article nine,
chapter sixty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to authorizing the secretary of state to promulgate
legislative rules relating to a standard size and
format for rules and procedures for publication of the
state register.

Be it enacted by the Legislature of West Virginia:

That section two, article nine, chapter sixty-four of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be amended and reenacted, to read
as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND
BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-2. Secretary of state.

4291

1 (a) The legislative rules filed in the state register
2 on the fifteenth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 three, article two, chapter three, of this code, modified
5 by the secretary of state to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the fourteenth day of November, one
8 thousand nine hundred ninety-four, relating to the
9 secretary of state (combined voter registration and driver
10 licensing fund, 153 CSR 28), are authorized.

11 (b) The legislative rules filed in the state register
12 on the twenty-seventh day of July, one thousand nine
13 hundred ninety-five, authorized under the authority of
14 section six, article two, chapter twenty-nine-a, of this
15 code, modified by the secretary of state to meet the
16 objections of the legislative rule-making review committee
17 and refiled in the state register on the twenty-second day
18 of January, one thousand nine hundred ninety-six, relating
19 to the secretary of state (standard size and format for
20 rules and procedures for publication of the state register,
21 153 CSR 6), are authorized.

22
23 NOTE: The purpose of this bill is to authorize the
24 Secretary of State to promulgate legislative rules relating
25 to a standard size and format for rules and procedures for
26 publication of the state register.

1 Strike-throughs indicate language that would be
2 stricken from the present law, and underscoring indicates
3 new language that would be added.

1 SENATE BILL NO. 001

2 (By Senators Ross, Anderson, Boley,
3 Buckalew, Grubb and Macnaughtan)

4 [Introduced January 29, 1996; referred
5 to the Committee on

6 The Judiciary

153-6

7
8
9
10 A BILL to amend and reenact section two, article nine,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the secretary of state to promulgate
14 legislative rules relating to a standard size and
15 format for rules and procedures for publication of the
16 state register.

17 Be it enacted by the Legislature of West Virginia:

18 That section two, article nine, chapter sixty-four of
19 the code of West Virginia, one thousand nine hundred
20 thirty-one, as amended, be amended and reenacted, to read
21 as follows:

22 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND
23 BOARDS TO PROMULGATE LEGISLATIVE RULES.

24 §64-9-2. Secretary of state.

1 (a) The legislative rules filed in the state register
2 on the fifteenth day of August, one thousand nine hundred
3 ninety-four, authorized under the authority of section
4 three, article two, chapter three, of this code, modified
5 by the secretary of state to meet the objections of the
6 legislative rule-making review committee and refiled in the
7 state register on the fourteenth day of November, one
8 thousand nine hundred ninety-four, relating to the
9 secretary of state (combined voter registration and driver
10 licensing fund, 153 CSR 28), are authorized.

11 (b) The legislative rules filed in the state register
12 on the twenty-seventh day of July, one thousand nine
13 hundred ninety-five, authorized under the authority of
14 section six, article two, chapter twenty-nine-a, of this
15 code, modified by the secretary of state to meet the
16 objections of the legislative rule-making review committee
17 and refiled in the state register on the twenty-second day
18 of January, one thousand nine hundred ninety-six, relating
19 to the secretary of state (standard size and format for
20 rules and procedures for publication of the state register,
21 153 CSR 6), are authorized.

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23 NOTE: The purpose of this bill is to authorize the
24 Secretary of State to promulgate legislative rules relating
25 to a standard size and format for rules and procedures for
26 publication of the state register.

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2 stricken from the present law, and underscoring indicates
3 new language that would be added.